

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Northern Illinois Gas Company)	
d/b/a Nicor Gas Company)	
)	Docket No. 08-0363
Proposed general increase in rates, and)	On Rehearing
revisions to other terms and conditions)	
of service)	

**STAFF'S REPLY TO COMPANY'S RESPONSE TO STAFF'S
MOTION TO RECONSIDER AND MOTION TO STRIKE**

JANIS VON QUALEN
JENNIFER LIN
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle St., Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jvonqual@icc.illinois.gov
jlin@icc.illinois.gov

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Counsel for Staff of the
Illinois Commerce Commission

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NOW COME the Staff witnesses of the Illinois Commerce Commission (“Staff”), by and through their undersigned counsel, pursuant to Section 200.190 of the Illinois Commerce Commission’s Rules of Practice (83 Ill. Adm. Code 200.190), respectfully submit their Reply to Northern Illinois Gas Company d/b/a Nicor Gas Company’s (“Nicor Gas” or “Company”) Response to Staff’s Motion to Reconsider and Motion to Strike.

In their Ruling issued on August 10, 2009, the Administrative Law Judges (“ALJs”) simply misunderstood the origin of the graphs attached as Appendix B to Staff’s Reply Brief on Rehearing. Staff is not asking the ALJs to reconsider their decision to strike Staff’s correlation analysis; Staff is asking that the ALJs reconsider their decision to strike the graphs and to strike the Company’s correlation analysis in its Reply Brief on Rehearing.

Motion to Reconsider

The Company focuses on Staff’s correlation analysis throughout its Response even though Staff focuses on its graphs in its Motion to Reconsider and Motion to Strike. It says that Staff “misses the point” with regard to the graphs presented by Staff in its Reply Brief on Rehearing. In fact, it is the Company who “misses the point” on the substance of the graphs. The graphs are not a correlation analysis. In Staff’s Reply

Brief on Rehearing, when discussing the correlation coefficients that were stricken, Staff cited to the graphs. However, although the graphs illustrate the data used to derive the correlation, they are separate and apart from the correlation analysis. The graphs visually depict the data used in the correlation. The correlation coefficient is mathematically derived from the data.

The Company states, “According to Staff, any person could create these charts – given the data chosen by Staff, the formula for the charts, a calculator and graphing paper.” (Co. Response, p. 2) The graphs do not contain data merely chosen by Staff; in fact, they contain data **provided by the Company** and **stipulated into evidence by the Company**. No expert analysis is required to plot data provided by the Company onto a picture. The numbers are what they are: accounts receivable is X, gas in storage is Y, other current liabilities is Z. This information was provided by the Company to Staff and when Staff chose to plot that data onto a graph, the Company objected to Staff’s use of that information. If the Company had a problem with Staff using that information, it should not have previously agreed to stipulate that evidence into the record.

The “... selection of the data used in Staff’s graphs and the manner in which to present the data...” (Co. Response, p. 2) are consistent with Staff’s testimony and briefs throughout the entirety of this docket. This is not expert testimony. The graphs are visual aids, visual representations of data already in the record. They simply use data provided by the Company and stipulated into evidence by the parties to illustrate the points Staff has been making throughout this proceeding.

The Company further states, “Taking Staff’s approach, the ALJs would have no way to know... whether she [Ms. Freetly] chose appropriate data for her graphs; or

whether the graphs make any sense at all.” (Co. Response, p. 2) This argument ignores the relationship of the graphs to the record in this proceeding. The data included in the graphs was not randomly selected but is consistent with Staff’s position throughout the proceeding. (Staff IB, pp. 37-38; Staff RB, pp. 18-20) Despite the Company’s protests, anyone familiar with the record could verify that the raw data used was provided by the Company and is contained in the evidence cited, and then could look at the graph, a picture of that data, and know whether the data was accurately portrayed. The graphs are direct representations of data in the record: data provided by the Company, data which does not need to be analyzed by an expert, data which does not need to be cross-examined.

Motion to Strike

Because the Ruling has stricken the correlation analysis presented by Staff in its Reply Brief on Rehearing, the ALJs should similarly strike the correlation analysis presented by the Company in its Reply Brief on Rehearing. (See Co. RB on Rehearing, pp. 3 and 14) The Company itself concedes that “At a practical level, there is also no real reason to believe that the ALJs somehow would rely upon Nicor Gas’ responsive argument, given that the same ALJs struck Staff’s new correlation analysis.” (Co. Reply, p. 3) This being the case, the ALJs should strike the Company’s correlation analysis as well. The Company went beyond responsive argument in its Reply Brief on Rehearing in providing its own interpretation of correlation coefficients and its own correlation analysis of non-rate base storage gas. (See Co. RB, pp. 3 & 14) Unlike the data used by Staff in its correlation analysis, which was in the record but nonetheless stricken, the data the Company used in its correlation analysis of non-rate base storage

gas is not even part of the record. Hence, the Company's correlation analysis and discussion must be stricken from its Reply Brief on Rehearing.

If the ALJs should reconfirm their decision to strike the graphs attached as Appendix B in Staff's Reply Brief on Rehearing, the ALJs should similarly strike Figure 1 in the Company's Reply Brief on Rehearing. To the extent the ALJs accept the Company's argument that the graphs contain information and analysis not supported by expert testimony or subject to cross-examination, that same argument must be applied to Figure 1. Figure 1 has no basis in testimony, is not comprised of data supported by the record, and is not subject to cross-examination. The Company admits that Figure 1 "merely offer[s] a *legal argument* in favor of regulatory consistency based upon the final orders entered by the Illinois Commerce Commission..." (Co. Reply, p. 3) In fact, Figure 1 is not a legal argument; it is a picture supporting a legal argument. The argument and the picture use information and analysis not supported by expert testimony or subject to cross-examination. Applying the Company's argument regarding Staff's graphs in its Reply Brief on Rehearing, Figure 1 should also be stricken for the same reasons. For those reasons, in the event the ALJs do not reverse their decision to strike the graphs in Appendix B of Staff's Reply Brief on Rehearing, Figure 1, which suffers from the same defects as attributed to the graphs, should also be stricken.

WHEREFORE, for all of the following reasons, Staff respectfully requests that the ALJs' Ruling striking the graphs attached as Appendix B of Staff's Reply Brief on Rehearing be reconsidered and reversed or, alternatively, that Figure 1 on page 5 of the

Company's Reply Brief on Rehearing be stricken and that Staff's Motion to Strike portions of pages 3, 5, and 14 of Nicor Gas' Reply Brief on Rehearing be granted.

August 24, 2009

Respectfully submitted,



JANIS VON QUALEN
JENNIFER LIN
Staff Counsel

JAN VON QUALEN
Office of General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
Phone: (217) 785-3402
Fax: (217) 524-8928
jvonqual@icc.illinois.gov

JENNIFER LIN
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle St., Suite C-800
Chicago, IL 60601
Phone: (312) 793-8183
Fax: (312) 793-1556
jlin@icc.illinois.gov